

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RUTH SMITH, Individually and as Widow for the)
Use and Benefit of Herself and the Next Kin of)
Richard Smith, Deceased,)
)
Plaintiff,) Civil No. 3:05-0444
) Judge Aleta A. Trauger
v.) (Dist. Of MA No.
) 1:05-cv-11515PBS)
PFIZER, INC., *et al.*,)
)
Defendants.)

DEFENDANTS' MOTION TO STRIKE LATE FILED RULE 26 DISCLOSURES

Defendants Pfizer Inc and Warner-Lambert Company LLC respectfully move to strike Plaintiff's late filed Rule 26 Disclosures. The grounds for this motion are set forth in the accompanying memorandum of law. Also submitted in support of this motion is a supporting Declaration of Mark S. Cheffo.

On January 21, 2010, Plaintiff submitted a supplemental disclosure identifying numerous new witnesses and documents. Plaintiff's failure to comply with the Court's scheduling order and her obligations under Federal Rules of Civil Procedure 16 and 26 is neither substantially justified, nor harmless, and has unduly prejudiced Defendants. Further, Plaintiff's failure to timely proffer individuals with knowledge relevant to her claims has precluded Defendants from a complete investigation of Plaintiff's claims, and as a result deprived Defendants of a full defense.

WHEREFORE, Defendants respectfully request that the Court issue an order precluding Plaintiff from introducing at trial any newly disclosed witnesses, evidence or exhibits introduced for the first time in Plaintiff's January 21, 2010, supplemental disclosure.

REQUEST FOR ORAL ARGUMENT

Defendants believe that oral argument will assist the Court, and they wish to be heard.

Accordingly, Defendants respectfully request oral argument on this motion.

Dated: February 5, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of February 2010, I electronically filed the foregoing document with the Clerk of the Court, United States District Court for the Middle District of Tennessee, using the CM/ECF system. True and correct copies of the foregoing documents are being served via the Court's CM/ECF system on the following:

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